IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5730 of 2007()

CRIME NO.357/07 OF KADACKAL POLICE STATIO

: PETITIONERS

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1. SOBHANA,
   PARAVILA PUTHEN VEEDU,
   PULLUPANA, KADACKAL.

2. K.VIJAYAN,
   PARAVILA PUTHEN VEEDU,
   PULLUPANA, KADACKAL.

BY ADV. SRI.K.SASIKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5730 of 2007

Dated this the 26th day of September, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 and 2. Altogether there are 3 accused persons. Accused No.1 and 2 are the daughter and son-in-law of the defacto complainant respectively. The 3rd accused is allegedly a person, who is friendly with accused 1 and 2 and who allegedly colluded with them for the commission of the alleged offence. F.I.R is registered alleging offences punishable, inter alia, under Sections 406, 468 and 420 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The gravamen of the allegations against the petitioners in the F.I.Statement lodged by the defacto complainant/father of the 1st accused is that they had colluded to bring into existence a forged false document to make it appear that the rights of two deceased brothers of the 1st accused as also the life interests of the defacto complainant and his wife were assigned in favour of the 3rd accused. There was a settlement deed executed by the defacto complainant under which he had settled his properties in favour of two male children of his. They unfortunately predeceased him and the defacto complainant was managing the properties after their death. The documents of title

were available in the house of the defacto complainant. The allegation is that the accused persons fraudulently took away the original title deeds, impersonated the 4 executants - deceased brothers, the defacto complainant as well as his wife and created false forged documents conferring rights on the 3rd accused. When the defacto complainant enquired about the missing documents, the 1st accused is alleged to have explained that it had been taken by the 2nd accused to pledge and raise certain amounts because of his financial difficulties.

3. The learned counsel for the petitioners submits that the allegations are totally false. The petitioners have nothing to do with the false documents which is said to have been created. There are disputes in the family about the properties which were earlier settled in favour of the male children who have now predeceased the defacto complainant. There are criminal cases also. Just to vex and harass the petitioners, the defacto complainant had somehow brought into existence the forged document and is now attempting to place the blame for such document at the doors of the petitioners. This in short is the contention raised. The petitioners do not, in these circumstances, deserve to endure the trauma of arrest and detention. Anticipatory bail may be granted to them, it is submitted.

4. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that all the available indications suggest that the petitioners are primarily responsible for creation of the false forged documents in favour of the 3rd accused. The theory that the defacto complainant himself must have brought such false forged documents into existence is too artificial and improbable to be swallowed. At any rate, at the moment and with the available indications, there is nothing to doubt or suspect the version of the defacto complainant. This is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked, submits the learned Public Prosecutor .

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I am unable to perceive any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is an eminently fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the

Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-